



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:290. Ranking system.

6 RELATES TO: KRS 12.010-12.020, 224.60-120, 224.60-130, 224.60-140, 40 CFR Part  
7 280

8 STATUTORY AUTHORITY: KRS 224.60-130(1) [(2)(e)]

9 NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 224.60-  
10 130(1) this [~~KRS 224.60-130(2)(e) requires the establishment of a ranking system for~~  
11 ~~distribution of funds from the petroleum storage tank account. This~~] administrative regulation  
12 establishes the criteria for ranking facilities according to the extent of damage to the environment  
13 and the financial ability of the petroleum storage tank owner or operator to perform corrective  
14 action, in order to address the completion of corrective action and the subsequent payment of  
15 claims.

16 Section 1. Applicability. A ranking system to address the completion of corrective action  
17 and the payment of claims shall be established for the Financial Responsibility Account and the  
18 Petroleum Storage Tank Account, respectively, as set forth in Section 2 and 3 of this  
19 administrative regulation.

20 Section 2. Ranking System for the Financial Responsibility Account. Facilities eligible  
21 to participate in the Financial Responsibility Account shall be ranked as follows:

1           (1) For purposes of determining extent of damage to the environment:

2           (a) Rank 1. Those facilities that are the source of confirmed contamination to domestic  
3 use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the  
4 Classification Outline (January 2006), incorporated by reference in 401 KAR 42:080.

5           (b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater  
6 Table I of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
7 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
8 Groundwater Table I and are not the source of contamination to domestic use wells, springs or  
9 cisterns. Facilities conducting corrective action under the provisions of the regulations in effect  
10 prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in  
11 Groundwater Table I and groundwater contamination has been confirmed at levels exceeding  
12 those listed in Groundwater Table I.

13           (c) Rank 3. Those facilities required to use the levels listed in Class III and Groundwater  
14 Table I of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
15 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
16 Groundwater Table I and are not the source of contamination to domestic use wells, springs or  
17 cisterns.

18           (d) Rank 4. Those facilities required to use the levels listed in Class IV and Groundwater  
19 Table II of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
20 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
21 Groundwater Table II and are not the source of contamination to domestic use wells, springs or  
22 cisterns. Facilities conducting corrective action under the provisions of the regulations in effect  
23 prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in

1 Groundwater Table II and groundwater contamination has been confirmed at levels exceeding  
2 those listed in Groundwater Table II.

3 (e) Rank 5. Those facilities required to use the levels listed in Class III and Groundwater  
4 Table II of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
5 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
6 Groundwater Table II and are not the source of contamination to domestic use wells, springs or  
7 cisterns.

8 (f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4 or 5, as specified  
9 in this subsection.

10 (2) Facilities shall be further categorized within their respective Rank as determined in  
11 subsection 1 of this section, based on the financial ability of the owner or operator as follows:

12 (a) Facilities shall be placed in Category 1 within their respective Rank if:

13 1. The owner's or operator's average adjusted gross income or average net income for the  
14 last five (5) years is less than \$50,000;

15 2. The owner's or operator's average annual revenue and income for the last five (5)  
16 years is less than \$100,000; or

17 3. The owner or operator is registered and recognized by the federal government as a tax-  
18 exempt nonprofit organization.

19 (b) Facilities shall be placed in Category 2 within their respective Rank if:

20 1. The owner's or operator's average adjusted gross income or average net income for the  
21 last five (5) years is more than \$50,000 but less than \$100,000; or

22 2. The owner's or operator's average annual revenue and income for the last five (5)  
23 years is more than \$100,000 but less than \$250,000.

1 (c) Facilities shall be placed in Category 3 within their respective Rank if:

2 1. The owner's or operator's average adjusted gross income or average net income for the  
3 last five (5) years is more than \$100,000; or

4 2. The owner's or operator's average annual revenue and income for the last five (5)  
5 years is more than \$250,000.

6 (d) Facilities within each Category shall be further prioritized based on the cabinet's  
7 evaluation of the threat posed to human health and the environment by the release from a  
8 petroleum storage tank.

9 (e) The cabinet shall utilize the information provided in an owner's or operator's  
10 Application for Assistance for purposes of determining financial ability to perform corrective  
11 action. The cabinet shall require that additional information be submitted if necessary to  
12 determine the financial ability of the owner or operator.

13 (3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying  
14 facility classification. Refusal by an owner or operator to allow access or additional information  
15 requested by cabinet inspectors will render the facility ineligible for reimbursement from the  
16 cabinet.

17 (4) If the cabinet receives additional information related to specific facilities it may  
18 amend facility rankings and categories, if necessary, in accordance with subsections 1 and 2 of  
19 this section.

20 Section 3. Facilities eligible to participate in the Petroleum Storage Tank Account shall  
21 be ranked as follows:

22 (1) For purposes of determining extent of damage to the environment:

1       (a) Rank 1. Those facilities that are the source of confirmed contamination to domestic  
2 use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the  
3 Classification Outline (January 2006), incorporated by reference in 401 KAR 42:080.

4       (b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater  
5 Table I of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
6 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
7 Groundwater Table I and are not the source of contamination to domestic use wells, springs or  
8 cisterns. Facilities conducting corrective action under the provisions of the regulations in effect  
9 prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in  
10 Groundwater Table I and groundwater contamination has been confirmed at levels exceeding  
11 those listed in Groundwater Table I.

12       (c) Rank 3. Those facilities required to use the levels listed in Class III and Groundwater  
13 Table I of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
14 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
15 Groundwater Table I and are not the source of contamination to domestic use wells, springs or  
16 cisterns.

17       (d) Rank 4. Those facilities required to use the levels listed in Class IV and Groundwater  
18 Table II of the Classification Outline (January 2006), incorporated by reference in 401 KAR  
19 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in  
20 Groundwater Table II and are not the source of contamination to domestic use wells, springs or  
21 cisterns. Facilities conducting corrective action under the provisions of the regulations in effect  
22 prior to April 18, 1994 shall be placed into this ranking if required to utilize the levels listed in

Groundwater Table II and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II.

(e) Rank 5. Those facilities required to use the levels listed in Class III and Groundwater Table II of the Classification Outline (January 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II and are not the source of contamination to domestic use wells, springs or cisterns.

(f) Rank 6. All other facilities that are not included in Ranks 1, 2, 3, 4 or 5, as specified in this subsection.

(2) Facilities shall be further categorized within their respective Rank as determined in subsection 1 of this section, based on the financial ability of the owner or operator (applicant) as follows:

(a) Facilities shall be placed in Category 1 within their respective Rank if:

1. The owner's or operator's average adjusted gross income or average net income for the last five (5) years is less than \$50,000.

2. The owner's or operator's average annual revenue and income for the last five (5) years is less than \$100,000.

3. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

(b) Facilities shall be placed in Category 2 within their respective Rank if:

1. The owner's or operator's average adjusted gross income or average net income for the last five (5) years is more than \$50,000 but less than \$100,000.

1        2. The owner's or operator's average annual revenue and income for the last five (5)  
2 years is more than \$100,000 but less than \$250,000.

3        (c) Facilities shall be placed in Category 3 within their respective Rank if:

4        1. The owner's or operator's adjusted gross income or average net income for the last five  
5 (5) years is more than \$100,000.

6        2. The owner's or operator's average annual revenue and income for the last five (5)  
7 years is more than \$250,000.

8        (d) Facilities within each Category shall be further prioritized based on the cabinet's  
9 evaluation of the threat posed to human health and the environment by the release from a  
10 petroleum storage tank.

11        (e) The Cabinet shall utilize the information provided in an owner's or operator's  
12 Application for Assistance for purposes of determining financial ability to perform corrective  
13 action. The cabinet shall require that additional information be submitted if necessary to  
14 determine the financial ability of the owner or operator.

15        (3) Cabinet inspectors shall be provided access to a facility for the purpose of verifying  
16 facility classification. Refusal by an owner or operator to allow access or additional information  
17 requested by cabinet inspectors will render the facility ineligible for reimbursement from the  
18 cabinet.

19        (4) If the cabinet receives additional information related to specific facilities, it may  
20 amend facility rankings and categories, if necessary, in accordance with subsections 1 and 2 of  
21 this section.

Section 4. Ranking Allocations. (1) Issuance of written directives shall be prioritized for facilities within the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, according to rank and category, in the following order:

(a) Rank 1, Category 1;

(b) Rank 1, Category 2;

(c) Rank 1, Category 3;

(d) Rank 2, Category 1;

(e) Rank 2, Category 2;

(f) Rank 2, Category 3;

(g) Rank 3, Category 1;

(h) Rank 3, Category 2;

(i) Rank 3, Category 3;

(j) Rank 4, Category 1;

(k) Rank 4, Category 2;

(l) Rank 4, Category 3;

(m) Rank 5, Category 1;

(n) Rank 5, Category 2;

(o) Rank 5, Category 3;

(p) Rank 6, Category 1;

(q) Rank 6, Category 2;

(r) Rank 6, Category 3.



1       (2) The cabinet shall consider the current legislatively enacted budget, associated  
2 appropriations, and available funding in making the allocations described in subsection 1 of this  
3 section.

4       (3) The cabinet shall notify owners or operators of the decision to suspend written  
5 directives for specified rankings within either the Petroleum Storage Tank Account or the  
6 Financial Responsibility Account, respectively, upon a determination of insufficient funding  
7 being available to initiate corrective action in all rankings.

8       (4) Actions directed and documented by the Environmental Response Team, upon the  
9 cabinet's declaration of an environmental emergency, shall take priority over the ranking system  
10 in this administrative regulation. Once the Environmental Response Team terminates the  
11 emergency phase, subsequent actions at the facility shall be prioritized in accordance with this  
12 administrative regulation.

13       (5) Facilities performing site checks or initial abatement at the written direction of the  
14 cabinet shall be reimbursed in lieu of the ranking system.

15       ~~[Section 1. Applicability. An owner or operator of a petroleum storage tank eligible to~~  
16 ~~participate in the petroleum storage tank account shall not be classified for reimbursement if the~~  
17 ~~owner or operator:~~

18       ~~(1) Is an individual who:~~

19       ~~(a) Owns or operates five (5) or fewer tanks; and~~

20       ~~(b) Has an average adjusted gross income for the five (5) year period, prior to applying~~  
21 ~~for assistance from the cabinet, of less than \$50,000; or~~

22       ~~(2) Has a tank that was abandoned or closed prior to December 22, 1988. This subsection~~  
23 ~~includes a facility under the direction of the implementing agency pursuant to 401 KAR 42:080~~

1 ~~at the time the release is detected. An owner or operator that is an organizational unit of the~~  
2 ~~executive branch of the Commonwealth of Kentucky shall not be reimbursed under this~~  
3 ~~subsection, but shall be classified pursuant to Section 6(14) of this administrative regulation.~~

4 ~~Section 2. Priority for Environmental Damage. (1) A facility shall be ranked for~~  
5 ~~environmental damage priority according to the following:~~

6 ~~(a) The extent of environmental damage caused or threatened, as previously established~~  
7 ~~by the cabinet;~~

8 ~~(b) Standards established in 401 KAR 42:070; and~~

9 ~~(c) Standards established in 401 KAR 42:080.~~

10 ~~(2) Priority due to the extent of environmental harm shall be established as follows:~~

11 ~~(a) First priority shall be given to a facility if:~~

12 ~~1. A release of petroleum has contaminated a:~~

13 ~~a. Domestic use well;~~

14 ~~b. Domestic use spring;~~

15 ~~c. Domestic use well head protection area, as defined in 401 KAR 42:080;~~

16 ~~d. Drinking water supply; or~~

17 ~~e. Utility conduit; or~~

18 ~~2. The facility is the source of fumes in an occupied building.~~

19 ~~(b) Second priority shall be given to a facility if, due to groundwater contamination, it is~~  
20 ~~required to meet the levels specified in Groundwater Table 1 of the Petroleum Underground~~  
21 ~~Storage Tank System Facility Classification Outline, incorporated by reference in 401 KAR~~  
22 ~~42:080, for a release of petroleum that poses a direct threat to a:~~

23 ~~1. Domestic use well;~~

1       ~~2. Domestic use spring;~~

2       ~~3. Domestic use well head protection area;~~

3       ~~4. Drinking water supply; or~~

4       ~~5. Utility conduit.~~

5       ~~(c) Third priority shall be given to a facility if a release:~~

6       ~~1. Has impacted an area outside the facility's property boundary;~~

7       ~~2. Has not contaminated and does not pose a threat to a:~~

8       ~~a. Domestic use well;~~

9       ~~b. Domestic use spring;~~

10       ~~c. Domestic use well head protection area;~~

11       ~~d. Drinking water supply; or~~

12       ~~e. Utility conduit; and~~

13       ~~3. Is not the source of fumes in an occupied building.~~

14       ~~(3) The owner or operator of the facility shall submit to the cabinet a copy of the~~  
15 ~~following documents, established in the "Petroleum Underground Storage Tank System Facility~~  
16 ~~Classification Outline", and previously submitted to the cabinet pursuant to 401 KAR 42:080:~~

17       ~~(a) "Classification Guide - Soil";~~

18       ~~(b) "Groundwater Guide"; and~~

19       ~~(c) "Verification of Facility Classification".~~

20       ~~Section 3. (1) The cabinet shall determine the financial ability of an applicant who owns~~  
21 ~~or operates a single facility. The following persons shall certify that they do not have an~~  
22 ~~ownership or operating interest in another facility:~~

23       ~~(a) For an individual owner or operator, the individual;~~

1 (b) For a partnership, each partner; or

2 (c) For a closely held corporation that is not a subsidiary, affiliate, or parent corporation;  
3 each officer, director, and shareholder.

4 (2) The cabinet shall determine the financial ability of an individual or partnership with  
5 an ownership or operating interest in more than one (1) facility if the applicant demonstrates that:

6 (a) The sole source of income is revenue from the ownership or operation of the facility;  
7 and

8 (b) The entity is unable to pay the entry level for participation in the petroleum storage  
9 tank account.

10 (3) The cabinet shall determine the financial ability of a closely held corporation, not a  
11 subsidiary, affiliate, or parent of another corporation, that is the owner of more than one (1)  
12 facility if:

13 (a) The profits of the corporation are the sole source of revenue for the shareholders; and

14 (b) The corporation has insufficient revenue to pay the entry level for participation in the  
15 petroleum storage tank account.

16 Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the  
17 individual, partnership or corporation shall submit the last five (5) years of income tax returns for  
18 the person, partnership or corporation.

19 (2) Priority for reimbursement from the petroleum storage tank account on the basis of  
20 financial ability shall be given to:

21 (a) First:

22 1. An individual partnership or corporation whose average adjusted gross income for the  
23 five (5) year period is less than \$50,000;

1           ~~2. A public entity with an annual revenue and income of less than \$100,000; or~~

2           ~~3. An entity registered and recognized by the federal government as a tax exempt~~  
3 ~~nonprofit organization;~~

4           ~~(b) Second:~~

5           ~~1. An individual, partnership, or a corporation whose average adjusted gross income for~~  
6 ~~the five (5) year period is less than \$100,000 but more than \$50,000; or~~

7           ~~2. A public entity with annual revenue or income of less than \$250,000 but more than~~  
8 ~~\$100,000; and~~

9           ~~(c) Third:~~

10          ~~1. An individual, partnership or a corporation whose average net income for the five (5)~~  
11 ~~year period is more than \$100,000; or~~

12          ~~2. A public entity with an annual revenue and income of more than \$250,000.~~

13          ~~(3) A partnership applicant shall submit the name and Social Security number of each~~  
14 ~~partner.~~

15          ~~(4) A subchapter S or closely held C corporation applicant shall submit the name and~~  
16 ~~Social Security number of each officer, director, and shareholder in the corporation.~~

17          ~~(5) A public entity who is an applicant shall submit its annual budget for the last five (5)~~  
18 ~~years to demonstrate financial ability.~~

19          ~~(6) The cabinet shall require that additional information be submitted, if necessary to~~  
20 ~~determine the financial ability of an applicant.~~

21          ~~Section 5. (1) The cabinet shall recover an amount paid to a person receiving~~  
22 ~~consideration for financial ability if the information submitted to the cabinet is knowingly~~  
23 ~~inaccurate or misrepresented, or knowingly made based on a false statement, representation, or~~

1 ~~certification in an application, payment request, or other document submitted to the cabinet. A~~  
2 ~~cost incurred by, or paid from, the fund which is based on knowingly false or inaccurate~~  
3 ~~information, a false statement, representation, or certification shall be recovered from the person~~  
4 ~~who asserted the knowingly false or inaccurate information, false statement, representation, or~~  
5 ~~certification.~~

6 ~~(2) A person certified pursuant to 401 KAR 42:314 or 401 KAR 42:316 who provides~~  
7 ~~knowingly false or inaccurate information or who makes a false statement, representation, or~~  
8 ~~certification on an application, payment request or other document submitted to the owner,~~  
9 ~~operator or the cabinet, shall be subject to revocation of that certification in accordance with 401~~  
10 ~~KAR 42:314 or 401 KAR 42:316, in addition to the recovery described in subsection (1) of this~~  
11 ~~section.~~

12 ~~Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank~~  
13 ~~Account. Reimbursement or payment of the cost of corrective action shall be in order of priority~~  
14 ~~according to the following:~~

15 ~~(1) First, an owner or operator of a facility that meets the conditions of Section 1(1)(a) of~~  
16 ~~this administrative regulation;~~

17 ~~(2) Second, an owner or operator of a facility that meets the conditions of Section 1(1)(b)~~  
18 ~~of this administrative regulation;~~

19 ~~(3) Third, an owner or operator of a facility that meets the conditions of Section 2(2)(a)~~  
20 ~~of this administrative regulation and whose financial ability is in the category listed in Section~~  
21 ~~4(2)(a) of this administrative regulation;~~

1           ~~(4) Fourth, an owner or operator of a facility that meets the conditions of Section 2(2)(b)~~  
2 ~~of this administrative regulation and whose financial ability is in the category listed in Section~~  
3 ~~4(2)(a) of this administrative regulation;~~

4           ~~(5) Fifth, an owner or operator of a facility that meets the conditions of Section 2(2)(c) of~~  
5 ~~this administrative regulation and whose financial ability is in the category listed in Section~~  
6 ~~4(2)(a) of this administrative regulation;~~

7           ~~(6) Sixth, an owner or operator of a facility that meets the conditions of Section 2(2)(a) of~~  
8 ~~this administrative regulation and whose financial ability is in the category listed in Section~~  
9 ~~4(2)(b) of this administrative regulation;~~

10          ~~(7) Seventh, an owner or operator of a facility that meets the conditions of Section 2(2)(b)~~  
11 ~~of this administrative regulation and whose financial ability is in the category listed in Section~~  
12 ~~4(2)(b) of this administrative regulation;~~

13          ~~(8) Eighth, an owner or operator of facility that meets the conditions of Section 2(2)(c) of~~  
14 ~~this administrative regulation and whose financial ability is in the category listed in Section~~  
15 ~~4(2)(b) of this administrative regulation;~~

16          ~~(9) Ninth, an owner or operator of a facility that meets the conditions of Section 2(2)(a)~~  
17 ~~of this administrative regulation and whose financial ability is in the category listed in Section~~  
18 ~~4(2)(c) of this administrative regulation;~~

19          ~~(10) Tenth, an owner or operator of a facility that meets the conditions of Section 2(2)(b)~~  
20 ~~of this administrative regulation and whose financial ability is in the category listed in Section~~  
21 ~~4(2)(c) of this administrative regulation;~~

1       ~~(11) Eleventh, an owner or operator of a facility that meets the conditions of Section~~  
2       ~~2(2)(c) of this administrative regulation and whose financial ability is in the category listed in~~  
3       ~~Section 4(2)(c) of this administrative regulation;~~

4       ~~(12) A claim listed in subsections (1) through (11) of this section shall be paid in order of~~  
5       ~~its category ranking. Within each category the claims shall be considered by the date of receipt~~  
6       ~~of the claim;~~

7       ~~(13)(a) A claim of a nongovernmental entity, not included in subsections (1) through (11)~~  
8       ~~of this section, shall be paid according to financial ability as provided in Section 4 of this~~  
9       ~~administrative regulation, in order of the date of receipt of the claim.~~

10       ~~(b) An individual, partnership or corporation with an average net income of more than~~  
11       ~~\$100,000:~~

12             ~~1. Shall not submit an income tax return; and~~

13             ~~2. Shall be paid after the claims addressed by subsections (1) through (13)(a) of this~~  
14       ~~section in order of receipt of the claim;~~

15       ~~(14)(a) A claim from an organizational unit of the executive branch of the~~  
16       ~~Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have its claim paid last, in~~  
17       ~~order of the date of receipt of the claim.~~

18       ~~(b) A claim from a county, a municipality, or an administrative body that is not an~~  
19       ~~organizational unit of the executive branch, shall be:~~

20             ~~1. Paid based upon financial ability as determined in Section 4(2) of this administrative~~  
21       ~~regulation, in order of receipt of the claim; and~~

22             ~~2. Ranked in the same manner as a claim from a private person.~~



1       ~~Section 7. (1) Payment of Certain Classes of Claims. The cabinet may determine that~~  
2       ~~only specified classes of claims as described in Section 6 of this administrative regulation will be~~  
3       ~~paid. In determining that a class of claims shall not be reimbursed, the cabinet shall consider the~~  
4       ~~following factors:~~

5               ~~(a) The impact of paying a particular class of claims on the cabinet's ability to reimburse~~  
6       ~~claims under the Financial Responsibility Account, 401 KAR 42:260, and the Small Owners~~  
7       ~~Tank Removal Account, 401 KAR 42:330;~~

8               ~~(b) The current and expected income of the fund; and~~

9               ~~(c) Actuarial projections for the number of future claims on the fund.~~

10              ~~(2) The cabinet shall issue a public notice of the decision to suspend reimbursement of a~~  
11       ~~class of claims.]~~

401 KAR 42:290 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director  
Division of Waste Management  
14 Reilly Road  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Bruce.Scott@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:290

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the criteria to rank (e.g. prioritize) facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the ranking and financial criteria described in KRS 224.60-130(2) to administer the accounts of the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the criteria for ranking facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists by establishing the criteria for ranking facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment proposes to modify the ranking criteria based on the environmental damage caused by groundwater contamination. This amendment also proposes to rank all facilities based on the same criteria regardless of account eligibility in the PSTEAF. Currently, this administrative regulation only ranks facilities eligible for the Petroleum Storage Tank Account.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the same ranking criteria for all facilities covered under the PSTEAF.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing criteria for ranking facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing criteria for ranking facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky,

approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment proposes to prioritize the ranking of facilities based on environmental damage from groundwater contamination and the owner's or operator's financial ability to perform corrective action.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the petroleum environmental assurance fee described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not propose an increase in funding.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

Tiering is applied to all owners and operators of UST systems based on their respective financial ability to perform corrective action and the extent of environmental damage.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:290

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-130 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): See below.

Other Explanation: This amendment may have an adverse effect on the expenditures of a local government. Currently, when an owner or operator applies for assistance from the PSTEAF, only those facilities that qualify for the Financial Responsibility Account (FRA) are assessed an entry level (e.g. deductible). This account is for facilities that are in compliance with the applicable criteria. The Petroleum Storage Tank Account (PSTA) is for facilities that are not in compliance with the same applicable criteria. This would seem to be an oddity, as facilities that are not in compliance are "rewarded" by not being assessed the entry level. This amendment proposes to rank facilities with respect to their placement in the Financial Responsibility Account or the Petroleum Storage Tank Account. This may have an adverse effect on expenditures when an owner or operator applies for reimbursement, as the entry level will be assessed to facilities in either account.